IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5484 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ABDUL VAHID ABDUL MAJID MOMIN
Versus
STATE OF GUJARAT AND OTHERS

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Appearance :
MS SN QURESHI for MR MM TIRMIZI for Petitioner.
RULE SERVED BY DS for Respondent Nos.1 - 2.
MR ND GOHIL, AGP for Respondent No. 3.
SERVED BY RPAD - (R) for Respondent No. 4.
MR M.IQBAL SHAIKH for JITENDRA MALKAN, Asst. Solicitor General for Respondent No. 4.

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 23/06/2006

ORAL JUDGMENT

By filing this petition, the petitioner, who is detained under the provisions of Prevention of Black Marketing and Maintenance of Supplies

of Essential Commodities Act, 1980 ("PBM Act" for short), has challenged his detention order on various grounds.

By an order dated 20-2-2006, the petitioner is detained under provisions of the aforesaid Act. With the detention order, the petitioner is also served with the ground of detention. In the grounds of detention, it is alleged that the petitioner is engaged in illegal selling like Hydrocarbon Petroleum Solvent and getting unauthorised government public distribution systems blue kerosene and mixing in petroleum liquid. The detaining authority after being subjectively satisfied, detained the petitioner by passing detention order under Sub-section (2) of Section (3) of the PBM Act.

Ms.Qureshi, learned advocate for the petitioner submitted that there is a delay in deciding the representation of the petitioner at the hand of the Central Government. She submitted that the petitioner has made a representation on 10th March, 2006, which was sent to the District Magistrate and the District Magistrate received the same on 13th March, 2006, thereafter, he forwarded it to the Central Government on 14th March, 2006, however, the representation of the petitioner was decided on 27th March, 2006, therefore, there is a delay in deciding representation of the petitioner. She further submitted that on this ground, the order of detention passed against the petitioner is required to be quashed. In support of her say, Ms.Qureshi has relied upon the decision of the Supreme Court in **Rajammal Vs. State of Tamil Nadu and Another,** reported in **AIR 1999 SC 684**, wherein it is held as under in paragraphs 9 and 10 :

> "9. The position, therefore, now is that if delay was caused on account of any indifference or lapse in considering the

representation such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing the representation. It is not enough to say that the delay was short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned.

10. What happened in this case was that the Government which received remarks from different authority submitted the relevant files before the Under Secretary for processing it on the next day. The Under Secretary forwarded it to the Deputy Secretary on the next working day. Thus there is some explanation for the delay till 9-2-1998. Thereafter the file was submitted before the Minister who received it while he was on tour. The Minister passed the order only on 14-2-1998. Though there is explanation for the delay till 9-2-1998, we are unable to find out any explanation whatsoever as for the delay which occurred thereafter. Merely stating that the Minister was on tour and hence he could pass orders only on 14-2-1998 is not a justifiable explanation, when the liberty of a citizen guaranteed under Article 21 of the Constitution is involved. Absence of the Minister at the Headquarters is not sufficient to justify the delay, since the file could be reached the Minister with utmost promptitude in cases involving the vitally important fundamental right of a citizen."

It is not in dispute that the Central Government received the representation of the petitioner on 16th March, 2006, as Mr.M.Iqbal Shaikh, learned Counsel appearing for the Central Government has accepted the said aspect. However, ultimately, the representation of the petitioner was decided on 27th March, 2006. Therefore, there is a delay of about 11 days in deciding the representation of the petitioner.

Mr.M.Iqbal Shaikh, learned Counsel appearing for the Central Government submitted that though the representation of the petitioner was received by the Central Government on 16th March, 2006, the same was sent to the concerned department on 20th March, 2006. He further submitted that on 25th and 26th March, 2006, there were holidays.

There is no satisfactory explanation coming forward with regard to four day's delay in sending the representation to the concerned department. Thereafter also, except stating that there were two holidays in between, there is no other explanation coming forward for the rest of the days. Ultimately, the representation of the petitioner was decided on 27th March, 2006. Therefore, there is a delay in deciding the representation of the petitioner and since, it is not satisfactorily explained, this petition is required to be allowed and the order of detention is required to be quashed.

Considering the aforesaid aspect of the matter, this petition is allowed. Order of detention dated 20-2-2006 is quashed and set aside. Petitioner – Abdul Vahid Abdul Majid Momin is ordered to be released forthwith unless his presence is required in connection with any other case. Rule is made absolute with no order as to costs.

(P.B.MAJMUDAR, J.)

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